

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

S.Ct. 01-2078

INQUIRY CONCERNING A JUDGE:

HON. ROBERT H. BONANNO

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**FJQC'S MOTION TO UNSEAL GRAND JURY TESTIMONY**

The Florida Judicial Qualifications Commission, by and through undersigned counsel, hereby moves this Court to unseal certain grand jury testimony and, as grounds therefore, states as follows:

1. The Florida JQC was created by the Florida Constitution, article V, §12 in 1966. Its function is to investigate and recommend to the Florida Supreme Court the removal of any judge whose conduct demonstrates present unfitness to hold office or to recommend appropriate discipline, where warranted.

2. As amended in 1996, the FJQC was divided into two separate panels: (1) an investigative panel which receives, investigates and determines whether and when to initiate formal charges; and (2) a hearing panel, which receives and hears formal charges upon referral from the investigative committee. Fla. Const. art. V, §12(b) (1996 rev.).

3. Fla. Constitution, Article V, section 12(a)(5) expressly provides that:

The Commission **shall** have access to all information from all executive, legislative and judicial agencies, **including grand juries**, subject to the Rules of the Commission .... (emphasis added).

This Constitutional provision uses mandatory language.

4. JQC Rule 6(e) similarly states that the JQC "**shall** have access to all information from all executive, legislative and judicial agencies, **including grand juries** ..." (Emphasis added). It is likewise mandatory in its terms. JQC Rule 2(9).

5. JQC Rule 2(8) also authorizes "Special Counsel," designated by the Investigative Panel "to gather and present evidence to both JQC panels and to represent the JQC in all proceedings, including investigations." The undersigned has been so appointed.

6. On December 8, 2000, a grand jury investigating judicial misconduct in Hillsborough County issued its presentment, calling *inter alia* for the removal of Judge Bonanno from office. That report remained sealed, in pertinent part, while Judge Bonanno pursued an appeal. Bonanno v. Investigation into Judicial Misconduct, 2<sup>nd</sup> DCA Case No. 2D01-562. Judge Bonanno dropped his appeal and the grand jury's report was released by Court order on June 19<sup>th</sup>, 2001. (App. A). A copy of the unsealed grand jury's report is attached. (App. B).

7. While these proceedings were pending, FJQC received access to certain limited grand jury testimony concerning Judge Bonanno, by agreed order. The motion and the order were entered under seal, and are so filed here. (App. C & D, filed under seal). The order required FJQC to maintain statutory confidentiality for the materials.

8. Section 905.27(1)(c), Fla. Stats. prohibits any person

"appearing before the grand jury" from disclosing the testimony of a witness except when required by court order to "further justice." However, FJQC is **not** a person appearing before the grand jury, falling within this subsection. Moreover, section 905.27(2) makes it unlawful for any person to disclose such testimony "except when such testimony is or has been disclosed in a court proceeding." This subsection likewise does not apply.

9. On June 21, 2001, FJQC requested the State Attorney to waive the State's privilege for the underlying grand jury testimony. (App. E). The State Attorney refused. (App. F).

10. Fla. Const. art V, §12(a))(5) giving FJQC access to grand jury testimony, implies the right to use such testimony in JQC proceedings, but simultaneously §905.27, Fla. Stats. appears to preclude such use.

11. Here, the grand jury has called for Judge Bonanno's removal based on "conflicting evidence" ostensibly given in the grand jury proceedings. Unless the grand jury testimony is unsealed, FJQC and this Court cannot determine whether and, as to what matters, Judge Bonanno gave conflicting testimony, and Judge Bonanno cannot defend himself against such claim. In order to maintain public confidence in the judiciary, FJQC submits that all of the material submitted to this Court, including the grand jury testimony, should be unsealed. In the interim, the grand jury testimony at issue is submitted to this Court under seal.

WHEREFORE, FJQC respectfully requests that this motion should be granted.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail this \_\_\_\_ day of September, 2001 to:

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